

C O P Y

in opinion

410-2

January 22, 1957

NEW HAMPSHIRE LAW LIBRARY

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The Honorable Lane Dwinnell
Governor of New Hampshire
Concord, New Hampshire

CONCORD, N.H.

Dear Governor Dwinnell:

You have requested an interpretation of the meaning of the recent amendment to Article 49, Part II of the New Hampshire Constitution, giving the Governor the power and authority to transact official business when absent from the State. You have asked whether the line of succession provided by Article 49 continues to stand and just what authority the President of the Senate will have when the Governor is outside of the State on official business since adoption of the aforementioned amendment.

The meaning of the amendment in my opinion is simply that the Governor is now authorized to transact official business for the State of New Hampshire when outside of the territorial limits of this State. The amendment does not affect the present succession provided by Part II, Article 49 and whenever the Governor is physically outside of the State, whether or not on official business, the rules of succession prescribed by said Article 49 are automatically invoked.

Thus, to answer your hypothetical example, if the Governor goes to New York City to perform an official act there, he has the necessary power and authority to transact that official business but there is also an Acting Governor in the State of New Hampshire in accordance with the succession prescribed in Article 49.

The power and authority of the Governor to act outside of the State of New Hampshire conferred by the amendment is limited to the official business involved. In order to possess the full power and authority of Governor of this State, it continues to be necessary that the Governor be physically present within the territorial limits of the State of New Hampshire.

Respectfully,

Louis C. Wyman
Attorney General

W/d

WEDNESDAY, JUNE 13, 1956

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[Art.] 49. [President of Senate, etc., To Act as Governor When Office Vacant; Speaker of House To Act When Office of President of Senate Also Vacant.] Whenever the chair of the governor shall become vacant, by reason of his death, absence from the state, or otherwise, the president of the senate shall during such vacancy, have and exercise all the powers and authorities which by this constitution the governor is vested with, when personally present; but when the president of the senate shall exercise the office of governor, he shall not hold his office in the senate. Whenever the chair both of the governor and of the president of the senate shall become vacant by reason of their death, absence from the state, or otherwise, the speaker of the house shall, during such vacancies, have and exercise all the powers and authorities which, by this constitution the governor is vested with when personally present. But when the speaker of the house shall exercise the office of governor, he shall not hold his office in the house. *Provided, nevertheless,* that while the governor is absent from the state on official business, he shall have the power and authority to transact such business.

EDWARD J. GALLAGHER,
WILLOUGHBY A. COLBY,
For the Committee.

On motion of Mr. Osborne of Concord, on a *viva voce* vote the report of the committee was adopted.

Mr. Gallagher of Laconia, for the Joint Committee on Form and Style and on Time and Mode of Submitting to the People the Amendments Agreed to by the Convention, to whom was referred Resolution No. 28, Resolution relating to changing the designation of county solicitors to county attorneys,

Having considered the same, reported the same with the following amendment:

Amend the resolution by striking out all after the word, "Resolved," and inserting in place thereof the following:

"That Article 71 of Part 2 of the Constitution be amended by striking out the word, 'solicitors,' and inserting in place thereof the words, 'county attorneys', so that said Article shall read as follows."

[Art.] 71. [County Treasurers, Registers of Probate, County Attorneys, Sheriffs, and Registers of Deed Elected.]

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Having considered the same, reported the same with the following amendment:

Amend the resolution by striking out all after the caption and inserting in place thereof the following:

Resolved, That Article 28 of Part Second be amended by striking out in the third line the word "male"; by striking out in the fourth line the words "parish with town privileges," and inserting in place thereof the word, ward; by striking out in the eighth line the word "parishes" and inserting in place thereof the word, wards; and by striking out in the ninth line the word "parish" and inserting in place thereof the word, ward, so that said article as amended shall read as follows:

[Art.] 28th. [Senators, How and by Whom Chosen; Right of Suffrage.] The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz.: Every inhabitant of each town and ward, and places unincorporated, in this state, of twenty-one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, shall have a right, at the biennial or other meetings of the inhabitants of said towns and wards, to be duly warned and holden biennially forever in the month of November, to vote in the town or ward wherein he dwells, for the senator in the district whereof he is a member.

On motion of Mr. Osborne, on a *viva voce* vote the report of the committee was adopted.

Mr. Gallagher of Laconia, for the Joint Committee on Form and Style and on Time and Mode of Submitting to the People the Amendments Agreed to by the Convention, to whom was referred Resolution No. 27, Resolution relative to powers of governor when absent from state,

Having considered the same, reported the same with the following amendment:

Amend the resolution by striking out all after the word, "Resolved," and inserting in place thereof the following:

"That Article 49 of Part 2 of the Constitution be amended by adding at the end thereof the following:

"Provided, however, that while the governor is absent from the state on official business, he shall have the power and authority to transact such business, so that said Article as amended shall read as follows."